



FOR CLERK USE ONLY

City Council

Item No. 4

## CITY COUNCIL AGENDA FACT SHEET

Finance  
Department

August 3, 2010

Requested Date

1. **Request:**

Council Approval

☒Information Only/  
Presentation☐

Other (specify)

☐

Hearing

☐2. **Requested Action:**

Adopt Resolution No. 10-\_\_\_\_\_ authorizing examination of the transactions and use tax records.

3. **Fiscal Impact:**

Revenue:

Increase

☐

Source: \_\_\_\_\_

Decrease

☐

Amount: \_\_\_\_\_

Cost:

Increase

☐

Source: \_\_\_\_\_

Decrease

☐

Amount: \_\_\_\_\_

Does Not Apply ☒ Recovery Fee dependent on discovery of  
non-compliance.4. **Reviewed By:**Finance Dept. on 7/22/2010By: [Signature]

Comments: \_\_\_\_\_

City Attorney on \_\_\_\_\_

By: \_\_\_\_\_

Comments: \_\_\_\_\_

*Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.*

CLERK USE ONLY:

CITY COUNCIL DATE: \_\_\_\_\_

Action

☐

Filing

☐

Consent

☐

Presentation

☐

Hearing

☐

Other(specify)

☐Reviewed by: City Clerk \_\_\_\_\_  
Date \_\_\_\_\_City Manager \_\_\_\_\_  
Date \_\_\_\_\_

## **CITY COUNCIL AGENDA REPORT**

**SUBJECT: RESOLUTION NO. 10-\_\_\_\_ AUTHORIZING EXAMINATION OF  
THE TRANSACTIONS AND USE TAX RECORDS.**

**AGENDA DATE: August 3, 2010**

**PREPARED BY: Judy Hashem, Finance Director**

**APPROVED FOR AGENDA BY: Victor M. Carrillo, City Manager**

**RECOMMENDATION: City Council is requested to take the following action:**

- 1. Adopt the attached Resolution No. 10-\_\_\_\_ authorizing examination of the transactions and use tax records.**

**FISCAL IMPACT: The professional services fee for The HDL Companies work to be performed under contract with the City of Calexico is 25% of the initial recovery of the tax, based on the audit of transactions.**

### **BACKGROUND INFORMATION:**

**The City has a contract with Hinderliter, de Llamas & Associates (The HDL Companies) to deliver sales tax services, including allocation audit and recovery. Other services include identifying the major sales tax producers within the City each quarter, reports on changes in each category of sales, analysis on sales tax trends, and identifying sales tax generators by geographic areas, quarterly visits to Calexico to meet and review sales tax data, sellers permit information, and projections on future sales tax revenues.**

**Hinderliter, de Llamas & Associates proposes to offer similar services on the new transactions and use tax recently passed by the voters to be implemented beginning October 1, 2010. The State Board of Equalization requires authorization from the City of Calexico for The HDL Companies to access the Board's confidential information to perform the proposed services. This resolution amends the existing contract with The HDL Companies to allow access to the transaction tax information on file with the Board of Equalization.**

**Each time The HDL Companies identify a business as having the potential for generating additional tax revenue to the City of Calexico, the City receives a Work Authorization prior to beginning the audit. This gives HDL authorization to verify the accuracy of the current reporting methodology and obtain the necessary documentation for the Board to modify allocation formulas and to return previous misallocated revenue to the City. Only the new tax revenue received by the City as**

**a result of the audit and recovery work, up to the date of discovery, is subject to the 25% fee.**

**The HDL Companies provide valuable data that allow the City: 1) to verify sellers permit information, to access reports by business type, to compare tax amounts from quarter-to-quarter and year-to-year, and other data; 2) to provide statistical data to the Redevelopment Agency to use as a resource in the area of economic development; and 3) to generate additional tax revenues, as a result of identifying misallocation of taxes.**

**DOCUMENTS ATTACHED:**

- 1. Resolution No. 10-\_\_\_\_\_**
- 2. 1992 The HDL Companies Agreement**

**Agenda Item No. \_\_\_\_\_**

**Page \_\_\_\_\_ Of \_\_\_\_\_**

**RESOLUTION NO. 10-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO  
AUTHORIZING EXAMINATION OF TRANSACTIONS AND USE TAX  
RECORDS.**

**WHEREAS**, pursuant to ordinance No. 10-\_\_\_\_\_, the City of Calexico entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local transactions and use taxes; and

**WHEREAS**, the City Council of the City of Calexico deems it necessary for authorized representatives of the City to examine confidential transactions and use tax records of the State Board of Equalization pertaining to transactions and use taxes collected by the Board for the City pursuant to that contract; and

**WHEREAS**, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from the transactions and use tax records of the Board; and

**NOW THEREFORE BE IT RESOLVED** that the City Council of the City of Calexico does hereby authorize the Finance Director to continue normal expenditures and to revise any payroll, fringe benefits and other expenses paid by the City to conform to the terms of any labor contracts/memorandum of understanding or other commitments which are approved by the City Council; and

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Calexico does hereby authorize as follows:

Section 1. That the City Manager or other officer(s) or employee(s) of the City of Calexico (hereafter referred to as City) designated in writing by the City Manager to the State Board of Equalization (hereafter referred to as Board), is hereby appointed to represent the City with authority to examine transactions and use tax records of the Board pertaining to transactions and use taxes collected for the City by the Board pursuant to the contract between the City and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of City transactions and use taxes by the Board pursuant to the contract.

Section 2. That the City's existing contract with Hinderliter, de Llamas and Associates is hereby amended to add thereto the examination of the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the Board. The fee for .

transactions tax related audit and recovery work will be 25% of all new transactions tax or related use tax recovered for those specific quarters identified as being missing and/or deficient.

Section 3. That Hinderliter, de Llamas and Associates is hereby designated to examine the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the Board. The entity designated by this section meets all of the following conditions.

- (a) Has an existing contract with the City to examine those transactions and use tax records;
- (b) Is required by that contract to disclose information contained in, or derived from, those transactions and use tax records only to the officer(s) or employee(s) authorized under Section 1 of this resolution to examine the information;
- (c) Is prohibited by that contract from performing consulting services for a retailer-during the term of that contract; and
- (d) Is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records, after that contract has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of City transactions and use taxes by the Board pursuant to the contract between the City and the Board.

Section 4. The City Clerk of the City is hereby directed to certify adoption of this Resolution and to send a copy to:

State Board of Equalization  
Local Tax Section MIC:27  
P. O. box 942879  
Sacramento, CA 94279-0001

PASSED, APPROVED, AND ADOPTED this 3rd day of August 2010.

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JOHN MORENO, Mayor

Attest:

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Lourdes Cordova, City Clerk

Approved as to Form:

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Jennifer Lyon, City Attorney

State of California )  
County of Imperial ) ss  
City of Calexico )

I, Lourdes Cordova, City Clerk for the City of Calexico do hereby certify the foregoing Resolution No. 10- \_\_\_\_ was adopted by the City Council in a regular session held on the 3rd day of August 2010 by the following vote to-wit:

AYES:

NOES:

ABSENT:

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Lourdes Cordova, City Clerk



Hinderliter, de Llamas & Associates  
HdL Coren & Cone  
HdL Software, LLC

June 22, 2010

RECEIVED  
JUN 29 2010  
BY:mg

Ms. Judy Hashem  
Finance Director  
City of Calexico  
608 Heber Avenue  
Calexico, California 92231

Dear Judy:

Congratulations on the successful passage of Measure H. The Board of Equalization will begin collecting the new tax on October 1 and you will receive your first advance at the end of December. The actual payments will begin with your March 2011 allocation.

Your ordinance and agreement with the Board of Equalization must be in place prior to October 1<sup>st</sup>. Donna Puchalski at (916) 324-1371 will help you with the paper work if you have not already contacted her. It should be processed as soon as possible.

We suggest that you also have the City Council adopt the attached resolution. This amends our existing contract to cover the new transactions tax and provides us access to that information which the State considers as a confidential data base that is separate from the Bradley-Burns sales tax. There is no additional charge for the transaction district tax reports that we include with our analyses. However, because of the majority of the submittals for a transactions tax involve non-payment rather than a misallocation, our audit fee is a flat 25% of the initial recovery with no prospective payments. The lower fee structure reflects that we have no enforcement authority and are therefore limited in the amount of follow up once we have done the initial research and brought a problem to the Board's attention.

In September, the Board of Equalization will send a letter to each taxpayer in the region informing them of the new requirement. They will also send out press releases to the media and include an article in their quarterly Tax Information Bulletin which is received by most accountants and tax professionals. It would not hurt to also include a notice in your utility billings to business and city and chamber of commerce newsletters.

Unlike sales tax where we wait a quarter to see if the state finds an error on their own, we begin examining and correcting the transactions tax allocations immediately. The number of districts has more than doubled in the last four years and the increase has both strained the Board of Equalization's capacity to properly audit these revenues and local businesses capacity to keep up with which district taxes to collect. Over 90% of the transactions tax cases that we submit to the Board of Equalization are cases where the tax is simply not being collected.

Assuming that the resolution is in place so that the Board forwards the data to us, we would begin a business by business analysis with the first download in March as well as review all related "use tax" data bases to insure that both sales and out of state purchases are being properly taxed and collected. Our experience is that the sooner we audit, the sooner the agency gets to full compliance.

Once again, congratulations on a successful campaign, Judy. Give me a call if you have questions or need additional information.

Sincerely,



Lloyd de Llamas

LdL/paf

Enclosure



## AGREEMENT FOR SALES TAX AUDIT AND INFORMATION SERVICES

This Agreement is made and entered into as of the 1st day of SEPTEMBER, 1992 by and between the CITY OF CALEXICO, a municipal corporation hereinafter called CITY, and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter called CONTRACTOR.

### RECITALS

WHEREAS, sales tax revenues can be increased through: a system of continuous monitoring, identification and correction of "point of sale" allocation errors and;

WHEREAS, City desires to provide for the examination of its sales tax allocations and receipts to ensure that "point of sale" is being properly recorded to city and to recover revenues erroneously allocated to other jurisdictions and allocation pools; and

WHEREAS, Contractor has the programs, equipment and personnel required to deliver the sales tax services referenced herein;

THEREFORE, City and Contractor, for the consideration hereinafter described, mutually agree as follows:

### SERVICES

The Contractor shall perform the following services:

#### A. Allocation Audit and Recovery

1. Contractor shall conduct an initial and on-going sales tax audit in order to identify and correct "point-of-sale" distribution errors and thereby generate previously unrealized sales tax income for the City. Common errors that will be monitored and corrected include: transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; misreporting of "point of sale" from the wrong location; delays in reporting new outlets; misidentifying transactions as a "use tax" rather than a "sales tax," and erroneous fund transfers and adjustments.
2. Contractor will initiate contacts with the appropriate sales management and accounting officials in companies that have businesses where a probability of error exists to verify whether current tax receipts accurately reflect the local sales activity. Such contracts will be conducted in a manner to encourage local business retention and expansion.
3. Contractor shall prepare and submit to the Board of Equalization all information necessary to correct any allocation errors that are identified and shall follow-up with the individual businesses and the State Board of Equalization to ensure that all back quarter payments due the City are recovered.
4. If during the course of its audit, Contractor finds businesses located in the City that are properly reporting sales tax but have the potential for modifying their operation to provide an even greater share to the City, Contractor will work with those businesses and the City to encourage such changes.

B. Optional Services

At city's option and on written request from the City Manager and/or Redevelopment Agency Director:

1. Contractor shall establish a special data base that identifies the name, address and quarterly allocations of the major sales tax producers within the City for the most current and previous four quarters from the date of this agreement. Major sales tax producers are defined as those businesses meeting a quarterly revenue threshold determined by City. Since 100% of the business outlets registered with the Board of Equalization are tracked monthly, this major producers data base is designed to highlight the activities of major businesses. A second data base covering the same period will be established showing total sales tax receipts for each business category identified by the Board of Equalization. These data bases will be utilized to generate special reports to the City on: major sales tax producers by rank and category, analysis of sales tax activity by category and business districts or redevelopment areas specified by City, analysis of reporting aberrations, and per capita and outlet comparisons with state wide sales.
2. Contractor shall provide up-dated reports each quarter identifying changes in sales by major outlets and by category; area growth and decline comparisons; and current graphics, tables, and top 100 listings. Quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments will be identified.
3. Contractor will additionally provide an analysis for the City or its Redevelopment Agency to share with Chambers of Commerce and other economic development interest groups that analyze City's sales tax trends by major groups, and geographic areas without disclosing confidential information.

4. Contractor will provide annual reports for the Administrator and City Council identifying historical growth comparisons with state, county, selected city averages and C.P.I. indices; top producer listings and make up and volatility of the economic base. Annual reconciliation worksheets to assist Finance Officers with budget forecasting will also be provided.

5. Contractor shall make available to City Staff the HdL DATA computer program and data base containing sellers permit information for all in-city business outlets registered with the Board of Equalization. In addition, contractor shall process for City the monthly registration and allocation files provided by the Board in magnetic media. Printouts of registration changes and dollars allocated by business name and number will be provided from these files on a monthly basis.

6. Contractor shall work with City and City Redevelopment Agency Staffs on questions related to tenant mix alternatives for maximum sales tax returns; advise City business license staff on utilization of reports to enhance business license collection efforts; provide sales tax projections on specific projects for redevelopment negotiation and city budget purposes; and provide sample reports, letters and programs to enhance the sales tax base through improved economic development efforts.

#### CONFIDENTIALITY

Section 7056 of the State of California Revenue and Taxation code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which a City may authorize persons other than City officers and employees to examine State Sales and Use Tax records.

The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made part of this contractual agreement.

- A. Contractor is authorized by this Agreement to examine sales and use tax records of the Board of Equalization provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- B. Contractor is required to disclose information contained in, or derived from, those sales and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information.
- C. Contractor is prohibited from performing consulting services for a retailer, as defined in California Revenue & Tax Code Section 6015, during the term of this agreement.
- D. Contractor is prohibited from retaining the information contained in, or derived from those sales and use tax records, after this Agreement has expired. Information obtained by examination of board records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the Contractor as a person, authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

#### PROPRIETARY INFORMATION

In performing its duties under this contract, Contractor will produce reports, technical information and other compilations of data to City. These reports, technical information and

compilations of data are derived by Contractor using methodologies, formulae, programs, techniques and other processes designed and developed by Contractor at a substantial expense. Contractor's reports, technical information, compilations of data, methodologies, formulae, programs, techniques and other processes designed and developed by Contractor shall be referred to as Proprietary Information. Contractor's Proprietary Information is not generally known by the entities with which Contractor competes.

Contractor desires to protect its Proprietary Information. Accordingly, City agrees that neither it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will at any time during or after the term of the Agreement, directly or indirectly use any of Contractor's Proprietary Information for any purpose not associated with Contractor's activities. Further, City agrees that it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will disseminate or disclose any of Contractor's Proprietary Information to any person or organization not connected with Contractor, without the express written consent of Contractor. The City also agrees that it will undertake all necessary and appropriate steps to maintain the proprietary nature of Contractor's Proprietary Information.

#### CONSIDERATION

- A. Contractor shall be paid 15% of all new Sales and/or Use tax revenue received by the City as a result of audit and recovery work performed by Contractor (hereafter referred to as "audit fees"). New sales and/or use tax revenue shall not include any amounts determined by City or Contractor to be increment attributable to causes other than Contractor's work pursuant to this agreement. In the event that Contractor is responsible for an increase in the tax reported by businesses already properly making tax payments to the City, it shall be Contractor's responsibility to separate and support the incremental amount attributable to its efforts prior to the application of the audit

fee. Said audit fees will apply to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the audit by Contractor and confirmation of corrections by the State Board of Equalization. Contractor shall provide City with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

Contractor shall obtain City approval prior to beginning the work of correcting tax reporting methodology or "point of sale" for specific businesses where said payment of the percentage fee will be expected. Said approval shall be accomplished by the City Administrator or his designated representative on the Sales Tax Audit Authorization form, a copy of which is attached as "Exhibit A." City shall pay audit fees upon Contractor's submittal of evidence of State Fund Transfers and payments to City from businesses identified in the audit and approved by the City.

- B. Upon written request of the City or Redevelopment Agency, Contractor shall establish the sales tax and audit data bases and shall provide the optional services referenced above for a fee of \$300.00 per month, invoiced quarterly (hereafter referred to as "monthly fee").
- C. Above sum shall constitute full reimbursement to Contractor for all direct and indirect expenses incurred by Contractor in performing audits including the salaries of Contractor's employees, and travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.

## CITY MATERIALS AND SUPPORT

City shall adopt a resolution in a form acceptable to the State Board of Equalization and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing Contractor to examine the confidential sales tax records of City. City further agrees to provide any information or assistance that may readily be available such as business license records within the City and to provide Contractor with proper identification for contacting businesses. City further agrees to provide copies of the monthly allocation reports received for the most recent five quarters from the execution of this agreement and to continue to provide copies of future allocation reports on computer readable magnetic media until such time as all audit adjustments have been completed by the State Board of Equalization and percentage reimbursements due the Contractor have been paid.

## TERMINATION

This Agreement may be terminated by either party by giving 30 days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, Contractor may continue to work through the date of termination. Upon termination as provided herein, Contractor shall be paid the value of all tax analysis and reporting work performed less payments previously made by City. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by Contractor which make tax payments after termination of this Agreement as a result of Contractor's work. After City receives said tax payments for such businesses, Contractor shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by Contractor and confirmation of



corrections by the State Board of Equalization. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

All documents, data, surveys and reports prepared by Contractor pursuant to this Agreement shall be considered the property of the City and upon payment for services performed by Contractor, such documents and other identified materials shall be delivered to City by Contractor.

#### INDEPENDENT CONTRACTOR

Contractor shall perform the services hereunder as an independent contractor and shall furnish such services in his own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of Contractor be considered as an employee of City.

#### NON-ASSIGNMENT

This Agreement is not assignable either in whole or in part by Contractor without the written consent of City.

#### ATTORNEY'S FEES

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

## GOVERNING LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this agreement.

## INDEMNIFICATION

Contractor hereby agrees to, and shall hold City, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from Contractor's willful or negligent acts, errors or omissions or those of its employees or agents. Contractor agrees to and shall defend City and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid willful or negligent acts, errors or omissions.

City hereby agrees to, and shall hold Contractor, its officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from City's negligent acts, errors or omissions under this Agreement. City agrees to and shall defend Contractor and its officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omissions.

## NOTICE

All notices required by this Agreement shall be given to City and Contractor in writing, by personal delivery or first class mail postage prepaid, addressed as follows:

City: CITY OF CALEXICO  
408 Heber Avenue  
Calexico, CA 92231

Contractor: HINDERLITER, DE LLAMAS, & ASSOCIATES  
2220 E. Alosta Avenue, Suite 205  
Glendora, CA 91740

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY:

CITY OF CALEXICO

Mayor

*Spurdes Cordova*  
City Clerk

CONTRACTOR:

HINDERLITER, DE LLAMAS & ASSOCIATES  
A California Corporation

*Alfred de Llamas*

APPROVED AS TO FORM:

*ER*  
City Attorney